

WEST BURTON SOLAR PROJECT

RESPONSE TO EXAMINING AUTHORITY'S SECOND WRITTEN QUESTION 2.5.13:

“The Applicant and NGET are requested to submit a single, jointly prepared set of PP, identifying any areas where agreement cannot be reached and providing details of each party’s position on areas of disagreement, together with any alternative wording proposed”

(11 APRIL 2024)

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

1. National Grid Electricity Transmission plc (“NGET”) is a statutory undertaker for the purposes of the Planning Act 2008.
2. NGET assets which have been identified as being within or within close proximity to the proposed Order limits are:
 - (a) Substations:
 - (i) West Burton 400kV Substation;
 - (ii) Associated Cables;
 - (iii) Associated fibre cables;
 - (b) Overhead lines:
 - ZDA
 - (i) 400kV Cottam – Keadby 1;
 - (ii) 400kV Cottam – Keadby 2;
 - (iii) 400kV Cottam – West Burton;
 - (iv) 400kV Keadby – West Burton 1;
 - (v) 400kV Keadby – West Burton 2;
 - (vi) 400kV High Marnham – West Burton;
 - 4ZM
 - (vii) 400kV Bicker Fen – Spalding North – West Burton;
 - (viii) 400kV Bicker Fen – Walpole – West Burton;
 - 4TM
 - (ix) 400kV Keadby – West Burton 1;
 - (x) 400kV Keadby – West Burton 2;
 - 4VE
 - (xi) 400kV Cottam – Keadby 1; and
 - (xii) 400kV Cottam – Keadby 2.
3. Further to NGET’s relevant representations which were received by the Examining Authority on 8 June 2023, NGET continues to seek to liaise with the Applicant in relation to the Protective

Provisions that it requires to be included within the DCO to ensure that its interests are adequately protected.

4. NGET has sought to engage with the Applicant in order to provide a response to the Examining Authority’s Second Written Question 2.5.13. In the absence of any substantive response from the Applicant to NGET’s requests to agree a combined response to Written Question 2.5.13 a red line version of the Protective Provisions comparing the Protective Provisions as currently contained within the draft DCO with NGET’s required Protective Provisions is attached to these written representations with changes explained in the table below:

Changes to the Applicant’s draft DCO (Revision E)	NGET’s comments
Reference to <i>National Grid Electricity Plc</i> instead of to <i>National Grid</i> .	NGET requires that it is referred to as National Grid Electricity Transmission Plc instead of just National Grid throughout the Protective Provisions as this removes any uncertainty as to the entity being referenced.
Interpretation, definition of “1991 Act”	NGET considers that this definition should be retained due to its use in paragraph 3 (On Street Apparatus) and paragraph 9 (Retained Apparatus) of the Protective Provisions.
Interpretation, definition of “acceptable credit provider”, “acceptable insurance” and “acceptable security”.	NGET considers that these definitions should be retained due to their use in paragraph 11 (Indemnity) of the Protective Provisions.
Interpretation, definition of “commence” and “commencement”	NGET considers that the original drafting proposed by the Applicant was very limited in in the extent of works that would be classified as commencement. In order to comply with relevant safety standards, and ensure the efficient operation of the network, NGET considers that a much broader scope of works falling within ‘commencement’ to include any below ground surveys and monitoring, ground work operations or the receipt and erection of construction plant and equipment is required and has provided appropriate drafting in relation to this. This drafting will ensure that any works undertaken in proximity to NGET apparatus will fall within the scope of the Protective Provisions and the protections contained therein will be engaged.
Interpretation, definition of “parent company”	NGET considers that this definition is required due to this terms inclusion in the definition of “acceptable security”.

Changes to the Applicant's draft DCO (Revision E)	NGET's comments
<p><i>Paragraph 4-(1) Where any street is stopped up or altered under article 9 (Power to alter layout, etc., of streets), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up or alteration and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.</i></p>	<p>NGET considers that the inclusion of paragraph 4(1) is required due to Article 9 of the draft DCO which relates to the power to alter the layout etc. of streets. In order to ensure that there is no impediment upon NGET's ability to access its assets and apparatus to allow efficient operation, maintenance, and safety procedures to continue paragraph 4(1) is required..</p>
<p><i>Paragraph 6-(2) ... and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.</i></p>	<p>NGET considers that additional wording at the end of paragraph 6(2) is required to ensure that it is clear that NGET is not responsible for procuring and/or securing the consent of third parties with an interest in the land, and entering into any such deeds and variations with them. The requirement to procure and secure the consent of third parties and enter such deed or variations with them has the potential to require a significant level of time and resources and it is not in the interests of the efficient running of the electricity network to require NGET to use its limited resources to undertake this work.</p>
<p><i>Paragraph 9-(5)(b) removal of or delayed and National Grid must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under subparagraph.</i></p>	<p>Works in proximity to and affecting NGET assets and apparatus require significant assessment and the involvement of multiple stakeholders from both inside and outside NGET, including complex engineering</p>

Changes to the Applicant's draft DCO (Revision E)	NGET's comments
	<p>assessment. Undertaking such assessment can take longer than 28 days and it is important that such assessment is undertaken fully instead of being rushed to comply with any arbitrary timescale in order to ensure that the safety of operations in proximity to high voltage apparatus is not compromised, nor is the operational security of the electricity transmission network.</p> <p>In the interests of safety and ensuring that there is no disruption to the electricity network caused by such works, NGET does not consider that including a time limit of 28 days for 'meaningful engagement' in relation to the approval of a plan of works is appropriate. The Applicant does not provide any clarification as to what constitutes 'meaningful engagement' and the lack of certainty about what is required, alongside the significant work required to assess any plans submitted means that NGET requires the proposed wording to be removed.</p>
<p><i>Paragraph 9-(9) removal of provided that such written notice is given by National Grid to the undertaker within 28 days of submission of a plan pursuant to sub-paragraph (1)</i></p>	<p>An assessment of whether the works proposed by the undertaker will require the removal of any apparatus requires significant consideration and the involvement of multiple stakeholders from both inside and outside NGET including complex engineering and/or feasibility assessment. If apparatus needs to be moved, failure to move such apparatus will have a significant impact upon the proper operation of the electricity transmission network and carries significant safety implications for the works carried out in proximity to such apparatus. NGET does not consider that including a time limit of 28 days to provide written notice that any apparatus needs to be moved is appropriate due to the level of assessment required to identify whether apparatus needs to be moved and the significant impacts should such apparatus not be properly identified.</p>

Changes to the Applicant’s draft DCO (Revision E)	NGET’s comments
<p><i>Paragraph 11-(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc’s apparatus until the following conditions are satisfied:</i></p> <p><i>(a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and unless otherwise agreed with National Grid Electricity Transmission Plc (acting reasonably) provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and</i></p> <p><i>(b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with National Grid Electricity Transmission Plc (acting reasonably) provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.</i></p>	<p>NGET considers that a requirement upon the undertaker to provide acceptable security for the construction period, as well as a requirement to hold acceptable insurance for the construction period is essential to ensure that its interests are protected.</p> <p>NGET is responsible for ensuring the efficient operation of the electricity transmission network, as well as ensuring that the network operates safely and has associated statutory duties with which it must comply. In the event that any impediment is caused to NGET apparatus or assets during the construction period, this can have significant consequences for the operation of the network as well as safety due to the high voltage of the electricity transmission network. The provision of acceptable security and insurance is a standard requirement of NGET (for example see paragraph 25(7) of Schedule 10 to The Hynet Carbon Dioxide Pipeline Order 2024) to ensure that any risk associated with works taking place in proximity to its assets and apparatus is mitigated.</p> <p>NGET considers that in the event the undertaker does not provide acceptable security and insurance then the significant risk to the operation of the electricity transmission network is such that there should be no ambiguity as to its ability to seek injunctive relief in respect of the works. Therefore, the inclusion of paragraph 11(8) is also essential to avoid any ambiguity.</p>

Changes to the Applicant's draft DCO (Revision E)	NGET's comments
<p><i>(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.</i></p>	
<p><i>Paragraph 15 Save for differences of disputes arising under paragraph 7(2), 7(4), 8(1), and 9....</i></p>	<p>NGET considers that the provisions in paragraphs 7(2) (removal of apparatus – consent for alternative apparatus), 7(4) (removal of apparatus – alternative apparatus to be constructed in agreed manner), and 9 (retained apparatus: protection of National Grid Electricity Plc as electricity undertaker) of the Protective Provisions are of such importance to ensure the efficient operation and safety of the electricity transmission network that the full scope of dispute resolution options should be available in the event of a dispute.</p> <p>Should NGET apparatus need to be moved, it is important that all necessary steps are taken to put all required consents in place, and ensure that replacement apparatus is built correctly. In such situations, NGET need to be able to act quickly to correct any defects in consenting and construction to ensure that the replacement assets are safe and ready to replace removed assets promptly and without any interruption of service.</p> <p>Should NGET apparatus be retained, NGET need to be able to act quickly and in whatever way it deems necessary to protect such apparatus and ensure it remains safe and fully operational.</p> <p>NGET recognises the importance of arbitration however it is of the view that in the event of a dispute related to paragraphs 7(2), 7(4) or 9, arbitration may not offer the urgent resolution that would be required.</p> <p>Paragraph 8(1) (facilities and rights for alternative apparatus) is covered by the dispute resolution procedure in paragraph 8(2)</p>

Changes to the Applicant's draft DCO (Revision E)	NGET's comments
	and so it does not need to fall within the scope of paragraph 15.

5. NGET remains willing to assist the Examining Authority including in trying to submit a single, jointly prepared set of PP, identifying any areas where agreement cannot be reached and providing details of each party's position on areas of disagreement, together with any alternative wording proposed.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

11 APRIL 2024

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

SCHEDULE 16

PROTECTIVE PROVISIONS

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

1. ~~(1)~~ For the protection of National Grid [Electricity Transmission Plc](#) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing, between the undertaker and National Grid [Electricity Transmission Plc](#).

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid [Electricity Transmission Plc](#), where the benefit of this Order is transferred or granted to another person under article 35 (*consent to transfer the benefit of the Order*)—~~Order~~—Order—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid [Electricity Transmission Plc](#) and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid [Electricity Transmission Plc](#) on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid [Electricity Transmission Plc](#) (but without prejudice to ~~paragraph 28(3)(b)~~[11\(3\)b](#)).

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any maintenance works to the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation);

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee);

or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989~~(a)~~, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as given to the term “authorised development” in article 2 of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

~~“commence” has the same meaning as is given in article 2 of this Order and “commencement” will be construed to have the same meaning save that for the purposes of this Part of this Schedule only, the terms “commence” and “commencement” include operations for the purposes of intrusive archaeological investigations and intrusive investigations of the existing condition of the ground or structures within 15 metres in any direction of National Grid’s apparatus;~~

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities

and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for National Grid ~~2-s~~ [Electricity Transmission Plc's](#) approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“~~i~~Incentive ~~d~~Deduction” means any incentive deduction National Grid [Electricity Transmission Plc](#) [Electricity Transmission plc](#) receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid [Electricity Transmission Plc](#): construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid [Electricity Transmission Plc](#)” means National Grid Electricity Transmission Plc (€Company #Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;

“specified works” means any of the authorised ~~works-development~~ or activities undertaken in association with the authorised ~~development which—~~ works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph ~~24-7(2)~~ or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph ~~24-7(2)~~ or otherwise; or

‡

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”;

“STC” means the System Operator Transmission Owner Code prepared by the electricity ~~‡~~Transmission ~~e~~Owners and NGESO as modified from time to time;

“STC ~~e~~Claims” means any claim made under the STC against National Grid [Electricity Transmission Plc](#) arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid ~~2-s~~ [Electricity Transmission Plc’s](#) transmission system which arises as a result of the authorised works; and

“~~‡~~Transmission ~~e~~Owner” means as defined in the STC.

On Street ~~#~~Apparatus

3. Except for ~~paragraph 21-paragraphs 4~~ (apparatus of National Grid [Electricity Transmission Plc](#) in streets subject to temporary prohibition or restriction of use), ~~paragraph 26- and public rights of way), 9~~ (retained apparatus: protection of National Grid [Electricity Transmission Plc](#) as electricity undertaker), ~~paragraph 27-10~~ (expenses), ~~—~~ and ~~paragraph 28-11~~ (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting

the rights and apparatus of National Grid [Electricity Transmission Plc](#), the provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid [Electricity Transmission Plc](#) are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid [Electricity Transmission Plc](#) in streets subject to [the power to alter layout or temporary prohibition or restriction of use stopping up of streets](#) and public rights of way

4.—(1) ~~Where any street is stopped up or altered under article 9 (*Power to alter layout, etc., of streets*), if National Grid [Electricity Transmission Plc](#) has any apparatus in the street or accessed via that street National Grid [Electricity Transmission Plc](#) has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up or alteration and the undertaker must grant to National Grid [Electricity Transmission Plc](#), or procure the granting to National Grid [Electricity Transmission Plc](#) of, legal easements reasonably satisfactory to National Grid [Electricity Transmission Plc](#) in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid [Electricity Transmission Plc](#) to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.~~

(2) ~~—(1) Notwithstanding the temporary [prohibition or restriction of use stopping up](#) or diversion of ~~a street or public right of way~~ [any highway](#) under the powers of article 11 (*temporary prohibition or restriction of use of streets stopping up and public rights of way*), National Grid [Electricity Transmission Plc](#) is at liberty at all times to take all necessary access across any such [stopped up](#) street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the ~~prohibition or restriction of use stopping up~~ or diversion was in that street or public right of way.~~

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid [Electricity Transmission Plc](#).

Acquisition of land

6. ~~—(1)~~ Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of National Grid [Electricity Transmission Plc](#) otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph ~~23(1)~~, prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid [Electricity Transmission Plc](#) and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid [Electricity Transmission Plc](#) or affect the provisions of any enactment or agreement regulating the relations between National Grid [Electricity Transmission Plc](#) and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid [Electricity Transmission Plc](#) reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid [Electricity Transmission Plc](#) and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid [Electricity Transmission Plc](#) unless otherwise agreed by National Grid [Electricity Transmission Plc](#), and it will be the responsibility of the undertaker to procure and/or secure the consent and

entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid [Electricity Transmission Plc](#) agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid [Electricity Transmission Plc](#) or other enactments relied upon by National Grid [Electricity Transmission Plc](#) as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by National Grid [Electricity Transmission Plc](#) under paragraph ~~26~~9 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph ~~23~~(1).

Removal of apparatus

7.—~~(1)~~ If, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid [Electricity Transmission Plc](#) to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid [Electricity Transmission Plc](#) in accordance with ~~sub~~-sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid [Electricity Transmission Plc](#) advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid [Electricity Transmission Plc](#) reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid [Electricity Transmission Plc](#) to its satisfaction (taking into account paragraph ~~25~~(1) below) the necessary facilities and rights

- (a) —for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid [Electricity Transmission Plc](#) may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for National Grid [Electricity Transmission Plc](#) to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid [Electricity Transmission Plc](#) and the undertaker.

(5) National Grid [Electricity Transmission Plc](#) must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid [Electricity Transmission Plc](#) of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1)⁺ Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid [Electricity Transmission Plc](#) facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid [Electricity Transmission Plc](#) and must be no less favourable on the whole to National [Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.](#)

~~Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.~~

(2) ~~(2)~~ If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid [Electricity Transmission Plc](#) than the facilities and rights enjoyed by it in respect of the apparatus to be removed (in National Grid^s— [Electricity Transmission Plc's](#) opinion, acting reasonably), the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph ~~32-15~~ [\(Arbitration\)](#) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid [Electricity Transmission Plc](#) as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of National Grid [Electricity Transmission Plc](#) as electricity undertaker

9.—(1)⁺ Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid [Electricity Transmission Plc](#) a plan of the works to be executed and seek from National Grid [Electricity Transmission Plc](#) details of the underground extent of their electricity assets.

(2) ~~The~~ [In relation to specified works the](#) plan to be submitted to National Grid [Electricity Transmission Plc](#) under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in ~~sub-sub-~~ [sub-](#) paragraph (2), include a method statement ~~describing—~~ [describing: -](#)

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
 - (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
 - (g) assessment of earth rise potential if reasonably required by National Grid~~s~~ [Electricity Transmission Plc's](#) engineers; and
 - (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid [Electricity Transmission Plc](#) has given written approval of the plan so submitted.
- (5) Any approval of National Grid [Electricity Transmission Plc](#) required under sub-paragraphs (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in ~~sub-sub-~~ paragraphs (6) or (8); and
 - (b) must not be unreasonably withheld ~~or delayed and National Grid must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).~~
- (6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid [Electricity Transmission Plc](#) may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage~~—~~ or for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or, as relevant, sub-paragraph (6) as approved or as amended from time to time by agreement between the undertaker and National Grid [Electricity Transmission Plc](#) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs ~~(6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.~~ ~~or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.~~
- (8) Where National Grid [Electricity Transmission Plc](#) requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid~~s~~ [Electricity Transmission Plc's](#) satisfaction prior to the commencement of any specified works for which protective works are required and National Grid [Electricity Transmission Plc](#) must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If National Grid [Electricity Transmission Plc](#) in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph ~~24(2), provided that such written notice is given by National Grid to the undertaker within 28 days of submission of a plan pursuant to sub-paragraph (1)(2).~~
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid [Electricity Transmission Plc](#) notice as soon as is reasonably practicable and a plan of those works and must comply with

- (a) —sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's Electricity Transmission Plc's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

10.—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably or properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

~~which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—~~

- (a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National ~~Grid—~~Grid Electricity Transmission Plc;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph ~~24(3)~~7(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph ~~32-15 (arbitration)~~ to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid [Electricity Transmission Plc](#) by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid [Electricity Transmission Plc](#) in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid [Electricity Transmission Plc](#) any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—~~(1)~~ Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid [Electricity Transmission Plc](#), or there is any interruption in any service provided, or in the supply of any goods, by National Grid [Electricity Transmission Plc](#), or National Grid [Electricity Transmission Plc](#) becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid [Electricity Transmission Plc](#) the cost reasonably and properly incurred by National Grid [Electricity Transmission Plc](#) in making good such damage or restoring the supply; and
- (b) indemnify National Grid [Electricity Transmission Plc](#) for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid [Electricity Transmission Plc](#), by reason or in consequence of any such damage or interruption or National Grid [Electricity Transmission Plc](#) becoming liable to any third party and including STC eClaims or an iIncentive dDeduction other than arising from any negligence or default of National Grid [Electricity Transmission Plc](#).

(2) The fact that any act or thing may have been done by National Grid [Electricity Transmission Plc](#) on behalf of the undertaker or in accordance with a plan approved by National Grid [Electricity Transmission Plc](#) or in accordance with any requirement of National Grid [Electricity Transmission Plc](#) or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph unless National Grid [Electricity Transmission Plc](#) fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan or as otherwise agreed in writing between the undertaker and National Grid [Electricity Transmission Plc](#).

- (3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect ~~of~~ of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid [Electricity Transmission Plc](#), its officers, servants, contractors or agents;
 - (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid [Electricity Transmission Plc](#) as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (*consent to transfer the benefit of the Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this paragraph ~~28(3)~~(b) will be subject to the full terms of this Part of this Schedule including this paragraph ~~2811~~; or
 - (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Grid [Electricity Transmission Plc](#) must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) National Grid [Electricity Transmission Plc](#) must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid [Electricity Transmission Plc](#) must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid ~~s~~ [Electricity Transmission Plc’s](#) reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid ~~s~~ [Electricity Transmission Plc’s control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.](#)

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc’s apparatus until the following conditions are satisfied:

- (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and unless otherwise agreed with National Grid Electricity Transmission Plc (acting reasonably) provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with National Grid Electricity Transmission Plc (acting reasonably) provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) ~~(7)~~ In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

~~control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.~~

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid [Electricity Transmission Plc](#) and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid [Electricity Transmission Plc](#) in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid [Electricity Transmission Plc](#) requires the removal of apparatus under paragraph ~~24~~[27\(2\)](#) or National Grid [Electricity Transmission Plc](#) makes requirements for the protection or alteration of apparatus under paragraph ~~26~~[9](#), the undertaker will use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid ~~'s~~ [Electricity Transmission Plc's](#) undertaking and National Grid [Electricity Transmission Plc](#) will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid ~~'s~~ [Electricity Transmission Plc's](#) consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with paragraph ~~23~~[6](#) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid [Electricity Transmission Plc](#) to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. ~~Any~~ [Save for differences or disputes arising under paragraph 7\(2\), 7\(4\) 8\(1\) and 9 any](#) difference or dispute arising between the undertaker and National Grid [Electricity Transmission Plc](#) under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid [Electricity Transmission Plc](#), be determined by arbitration in accordance with article 42 (*arbitration*).

Notices

16. Notwithstanding article 45 (*service of notices*), any plans submitted to National Grid [Electricity Transmission Plc](#) by the undertaker pursuant to paragraph ~~26~~[9](#) must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid [Electricity Transmission Plc](#) may from time to time appoint instead for that purpose and notify to the undertaker in writing.